



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 22, 2010. Based on the evidence of the Landlord's agent, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on July, 2010 as a month to month tenancy. Rent is \$450.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$225.00 on June 30, 2008.

The Landlord's agent said that the Tenant did not pay \$110.00 of rent for August, 2010 and \$450.00 of unpaid rent for September when it was due and as a result, on September 12, 2010 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated September 12, 2010. The Landlord's agent said the Tenant has unpaid rent for October, 2010 of \$450.00 and he is concerned they will not be able to rent the unit out for November, 2010.

The Landlord's agent further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord's agent that he will not pay the rent and will not move out.

The Landlord's agent also sought to recover the \$50.00 filing fee for this proceeding.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlords are entitled to recover unpaid rent for August, 2010, in the amount of \$110.00, unpaid rent for September, 2010 of \$450.00 and unpaid rent for October, 2010 of \$450.00. I further find that the Landlords are not entitled to recover a loss of rental income for November as they did not apply for compensation for damage or loss and Landlords have an obligation to mitigate their damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlords will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,010.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,060.00

Balance Owing	\$1,060.00
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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,060.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dispute Resolution Officer